PUBLIC PROSECUTOR v. SUBRAMANIAM & ANOR.

[A. Cr. J. (Buhagiar J.) December 9, 1955]

[K. L. — Criminal Appeal No. 76 of 1955]

Penal Code, s. 193 — Giving false evidence — Statements made in the course of police investigation — Statement need not be taken in form of question and answer — Joint trial — Criminal Procedure Code (Cap. 6), ss. 112 and 170.

The respondents in this case were charged with offences punishable under s. 193 of the Penal Code. They had made statements to police officers in the course of a police investigation into an alleged offence of attempted robbery. Subsequently they gave evidence at a preliminary inquiry and in their evidence they made statements which were alleged to be contrary to the statements made to the police officers. The respondents were charged with giving false evidence.

At the beginning of the trial the learned Magistrate asked counsel for the accused whether he was of opinion that his clients would be prejudiced by the hearing of both charges; counsel replied that he had no objection to the joint trial and the Magistrate ruled that the two charges against the two respondents formed one transaction and should proceed as one trial.

At the conclusion of the case for the prosecution the learned Magistrate held that there was no case to answer mainly on the grounds (1) that s. 112 of the Criminal Procedure Code in effect required police officers recording statements by witnesses to do so in the form of question and answer, and this was not done in this case and (2) that as the respondents were suspected persons at the time of the police investigation they were under no obligation to state the truth should statements made in any way compromise them. The Public Prosecutor appealed against their acquittal.

Held: (1) the two charges against the respondents in this case did not form one transaction and therefore the joint trial was an illegality; (2) it is not essential under s. 112(ii) of the Criminal Procedure Code that the statement in a police investigation should be rendered in the form of a question and answer, but before an accused person can be held guilty under s. 193 of the Penal Code it is necessary that it should be shown by the evidence that the statement which is set out in the charge was a statement in answer to a question put by the investigating officer to the accused; (3) such evidence need not be evidence appearing on the statement itself and oral evidence may be adduced to show that a statement was rendered in answer to a question; (4) although under s. 112 of the Criminal Procedure Code a person may refuse to answer questions which have a tendency to expose him to a criminal charge or penalty or forfeiture, if he does answer he is bound to answer truly; (5) on the facts in this case there was evidence to show that the statements in the charge were made in answers to questions by the investigating officer and therefore the learned Magistrate was wrong in holding that no case had been made against the respondents.

Cases referred to:—

(1) *Inder Singh v. Public Prosecutor* (1940) M.L.J. 174.

(2) *Public Prosecutor v. Pachaiappan* (1941) M.L.J. 102; (1940) F.M.S.L.R. 50.

(3) *Kandiah v. R.* (1953) M.L.J. 64.

(4) *Beh Chai Eng v. Public Prosecutor* (1950) M.L.J. 158.

(5) *Public Prosecutor v. Nazarid Fernandez* (1954) M.L.J. 5.

(6) *Tan Hong Hee v. Public Prosecutor* (Selangor — Criminal Appeal No. 63 of 1953 — unreported).

MAGISTRATE'S CRIMINAL APPEAL.

E. Brown (Federal Counsel) for the appellant.

Respondents in person.

Buhagiar J. : — This is an appeal by the Public Prosecutor against an order made by the learned Magistrate acquitting and discharging both respondents at the conclusion of the case for the prosecution without calling them to make their defences.

The respondents were charged with offences punishable under section 193 of the Penal Code. The case arose out of statements which the respondents made on the 20th December, 1954 to Police Officers in the course of a Police investigation into an alleged offence of attempted robbery. On that day the first respondent made a statement to A.S.P Sunderaraj and the second respondent made a statement to Inspector Subbiah. Both respondents were witnesses in the preliminary enquiry before Inche Abdul Rani into an alleged offence of attempted robbery and in their evidence they made statements which, it was alleged, were contradictory to the statements made to the Police Officers.

At the beginning of the trial the learned Magistrate asked counsel for the accused whether he was of opinion that his clients would be prejudiced by the hearing of both charges; counsel replied that he had no objection to the joint trial and the Magistrate ruled that the two charges against the two respondents formed one transaction and proceeded as one trial.

At the conclusion of the case for the prosecution the learned Magistrate held that there was no case to answer mainly on the grounds that section 112 of the Criminal Procedure Code in effect requires Police Officers recording statements by witnesses to do so in the form of question and answer, and this was not done in this case, and that as the respondents were suspected persons at the time of the Police Investigation they were under no obligation to state the truth should statements made in any way compromise them.

The grounds of appeal are :—

(1) That the learned Magistrate was wrong in law in ruling that the charge against the First accused could be tried together with a similar charge against Second accused;

Alternatively

(2) That the Magistrate misdirected himself in law in holding that s. 112 of the Criminal Procedure Code requires a statement to a Police Officer making a police investigation under Chapter XIII to be recorded in the form of question and answer;

(3) That the Magistrate misdirected himself in law in holding that the questions put by P.W. 1 and P.W. 3 did not place upon either accused the obligation to answer truly;

(4) That the Magistrate was wrong in law in failing to call upon the first accused in any event upon the undisputed evidence of P.W. 1 (A.S.P. Sunderaraj) that the accused made a statement to him.

With regard to the first ground of appeal it is difficult to see how it can possibly be said that the two charges against the two respondents formed one transaction. The only thing which is common in the two charges is the alleged offence of attempted robbery in respect of which there was a police investigation and later a preliminary inquiry. Section 170(i) of the Criminal Procedure Code, as is abundantly clear from illustration (d) does not apply to cases like the present. The joint trial was therefore an illegality.

On the second ground of appeal the learned Deputy Public Prosecutor submitted that s. 112 of the Criminal Procedure Code does not lay down that statements are to be taken down in the form of question and answer; it is sufficient if a statement which forms the subject of a charge under section 193 of the Penal Code is made in answer to a question and it is immaterial whether the fact that a question was put appears from the statement itself or aliunde from oral evidence.

In my opinion this is the correct interpretation of section 112; nowhere in that section is it laid down that the statement should be taken in the form of question and answer; sub-section (ii) of that section lays down that that a person is bound to answer truly all questions, put to him; it is not essential under this provision that the statement should be recorded in the form of question and answer; but before an accused person can be held guilty under section 193 of the Penal Code it is necessary that it should be shown by the evidence that the statement which is set out in the charge was a statement in answer to a question put by the investigating police officer to the accused. This has been accepted view in cases of the Courts in Malaya (with the exception of *Inder Singh v. Public Prosecutor*[1]) —see *Public Prosecutor v. Pachaiappan*[2]; *Kandiah v. R.*[3]; *Beh Chai Eng v. Public Prosecutor*[4]; *Public Prosecutor v. Nazarid Fernandez*[5] and *Tan Hong Hee v. Public Prosecutor*[6]. The evidence to show that that the statement which is set out in the charge was a statement in answer to question put by the investigating police officer need not be evidence appearing on the statement itself; oral evidence may be adduced to show that a statement was recorded in answer to a question. Thus in the last mentioned case, *Tan Hong Hee v. Public Prosecutor*[6], Mathew C.J. said: "It is not clear from the evidence of the Inspector whether the particular statement, the subject of the charge, was elicited in answer to question .... There is no proof that the statement, the subject of the charge, was elicited in answer to a question. In the absence of such proof, following the decision in *Kandiah v. R.*[3] and *Beh Chai Eng v. Public Prosecutor*[4], the appeal is allowed and the conviction quashed." It is clear from this that the evidence need not be evidence appearing on the face of the statements.

In the present case the statements by the two respondents were taken down in narrative form prefaced by the questions :—

"Do you remember Saturday last, i.e., 18.12.54?" and "Can you tell me what you did that day?"

in the case of the first respondent, and the questions :—

"Do you remember what happened on Saturday 18.12.54?" and "Can you tell me in detail what you did on this day?"

in the case of the second respondent.

In some cases it may be difficult to distinguish between statements in a narrative which are a direct answer to a question and statements which cannot be so considered. In the present case, however, the difficulty does not arise.

In reply to the second question put to him the first respondent stated :—

"At about 10.30 p.m. on 18.12.54 I was in my house with my mother. My mother had gone to bed in the room. Gabriel (identified) whom I know as Govindaraju alias Rajoo came to me. He told me to accompany him to Kuala Lumpur. I came out of the house and he then explained the true purpose of his visit to me. Outside the house he told me that we were to go to Pahang Road, Setapak. He told me that he was going to steal tin ore."

He then went on to relate further on the events of that day. No further questions appear to have been put to the first respondent but later in the statement he related events that took place on the previous day, that is the 17th December, and further on events that took place one month previously. The part of the statement which has been underlined above formed the subject of the charge. Now the later part of the statement is definitely not made in answer to the question: "Can you tell me what you did that day?" and there is no evidence that questions were put by the investigating police officer; the first part of the statement, however, and particularly the words which form the subject of the charge, coming as they do immediately after the question, is clearly in answer to the question.

The same applies to the statement which forms the subject of the charge in the case of the second appellant; this statement coming as it does immediately

after the question put by the police officer is a direct answer to that question.

There are, however, other elements in this case in support of the charge. The first respondent in the course of the preliminary stated in evidence: "I did not make any statement to A.S.P. Sunderaraj" and there was clearly evidence that he had made such statement; and the second respondent, in the course of the same inquiry, stated in evidence: "I told the Inspector lies and falsehoods to all his questions."

With regard to the last ground of appeal, it is clear that under sub-section (ii) of section 112 (as amended by section 2(b) of Ordinance .No. 79 of 1952) that a person is bound to answer truly all questions put to him; he may *refuse* to answer questions which would have a tendency to expose him to a criminal charge or penalty or forfeiture, but if does answer he is bound to answer truly.

The appeal must therefore succeed; the order of the learned Magistrate acquitting and discharging the accused is set aside and there shall be separate trials in respect of the two charges against the two respondents before another Magistrate.

Appeal allowed.

MYDIN v. REG.

[A. Cr. J. (Spenser Wilkinson J.) November 15, 1955]

[Penang — Criminal Appeal No. 43 of 1955]

Common Gaming Houses Ordinance, 1953, ss. 4(1)(a), (b) & (2), 18(1)(d) and 19 — Betting Ordinance, 1953, s. 4(1)(b) — Charges of permitting premises to be used as a common gaming house and of permitting premises to be used as a common betting house — Presumption.

In this case the appellant was charged with 2 charges (1) that he being the occupier of premises No. 21 Church Street did permit the premises to be used as a common gaming house by operating a lottery an offence under s. 4(1)(a) of the Common Gaming Houses Ordinance, and (2) that he being the occupier did permit the premises to be used as a common betting house an offence under s. 4(1)(b) of the Betting Ordinance.

The facts were that a police raid took place upon the premises on the day in question. The only normal means of entry and exit from the premises was the front door which could not be opened from outside. When the police party arrived they found the front door closed, but the left hand window was open. One of the police party saw an Indian inside the premises who took some papers out of a drawer of a table and went to the back portion of the premises. The police gained entry into the premises by going into a neighbouring house and scaling the wall so as to enter the premises by the top floor. Upon searching the premises they found under a stove in the kitchen various pieces of paper crumpled in a heap. These pieces of paper were proved to consist partly of punter's tickets in respect of betting on horse races and partly of documents relating to 1,000 and 10,000 character lottery. The police found in the kitchen an Indian who said he was the cook. The appellant was shown to be the tenant of the premises and there was also some evidence that the front portion of the premises on the ground floor was sublet to one Batcha. There was no search warrant obtained either under the Common Gaming Houses Ordinance or the Betting Ordinance but, the Inspector who led the raid said he was empowered with the powers of a Senior Police Officer under the Common Gaming Houses Ordinance and that he entered the premises under s. 18(1)(d) of the said Ordinance.

At the conclusion of the case for the prosecution, the learned Dy. Public Prosecutor who conducted the case in the trial Court applied to amend each charge by substituting the word "owner" for the word "occupier" in each case. The charges were amended accordingly, the accused was re-charged and having claimed trial was called upon for his defence. At the conclusion of the case the learned Magistrate convicted the appellant upon both charges.

Held: (1) as there was no evidence to show that the premises had been entered in accordance with the provisions of the Betting Ordinance, the presumptions in that Ordinance did not arise; (2) the mere finding of betting slips upon premises is not by itself sufficient to prove that the premises have been used as a common betting house and therefore there was insufficient evidence, without the presumptions, to prove that the premises have been used as a common betting house; (3) there was evidence, although it was the barest minimum, that the entry to the premises had been made in accordance with the provisions of the Common Gaming Houses Ordinance; (4) the presumption under s. 19 of the Common Gaming Houses Ordinance could not be applied in this case, as the appellant was not charged with keeping or using the premises as a common gaming house; (5) the prosecution in this case had not proved that the appellant had let the kitchen for hire to the cook and that he was the owner of the premises, within the meaning of the Common Gaming Houses Ordinance and therefore the presumption under s. 4(2) of the Ordinance did not apply; (6) therefore the convictions on both charges must be quashed.

Cases referred to:—

(1) *Lee Ching Seng v. Public Prosecutor* (1954) M.L.J. 181.

(2) *R. v. Thong Chung Chong* (1938) M.L.J. 179.

MAGISTRATE'S CRIMINAL APPEAL.

Lim Kheng Kooi for the appellant.

D. C. Jackson (Sr. Federal Counsel) for the respondent.

Spenser Wilkinson J.: — The appellant was originally charged under section 4(1)(a) of the Common Gaming Houses Ordinance, 1953 that being the occupier of premises No. 21, Church Street, Penang he used the premises as a common gaming house by operating a public lottery and secondly under section 4(1)(b) of the same Ordinance that at the same time and place he permitted the premises to be used as a common gaming house by operating a public lottery.

Before the evidence was led the first of these charges was withdrawn by the Public Prosecutor and the appellant was discharged in respect thereof, such discharge amounting to an acquittal. The second of